

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 607 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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DAMJIBHAI BACHUBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR CL SONI for Petitioner

MR UMESH TRIVEDI ADDL PUBLIC PROSECUTOR for Respondent No. 1

RULE SERVED for Respondent No. 2

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/07/1999

ORAL JUDGEMENT

#. Heard Mr.C.L.Soni, learned advocate for the revisioner and Mr. Trivedi, learned APP.

#. The revisioner herein challenges the order passed by the learned Sessions Judge, Rajkot in exercise of powers under Section 319 of Cr.P.C. in Sessions Case No : 152 of 1997 below application tendered by the original

complainant to join the present revisioner as an accused. The learned Sessions Judge was pleased to allow the application and ordered that the present revisioner be joined as an accused.

#. Mr.Soni challenges this order only on the basis of the decision of the Apex Court on the ground that before the learned Sessions Court, recording of evidence has not begun and without recording evidence, the Sessions Court could not have exercised powers under Section 319 of the Cr.P.C. In support of his say, he has placed reliance on a decision rendered in case of Ranjeet Singh Vs. State of Punjab, AIR 1998 SC 3148.

#. Mr.Trivedi, learned APP, on the other hand, submitted that the matter has reached at the stage of recording of evidence and therefore, it would make no difference and therefore, the revision may not be entertained and hence the same deserve to be dismissed.

#. Having considered the rival side contentions. It is an undisputed fact that in the instant case, no evidence is recorded before the Sessions Judge. Before that could be done, application in question was tendered for impleading the present revisioner, in exercise of powers under Section 193 of Cr.P.C., as an accused and the impugned order came to be passed. The proposition of law as regards power of Sessions Court to arraign a person other than accused as an accused as emerging from the case of Ranjeet Singh Vs. State of Punjab, Supra can be stated as under;

"18. So from the stage of committal till the Sessions Court reaches the stage indicatd in Section 230 of the Code that can deal with only the accused referred toi in Section 209 of the Code. There is no intermediary stage till then for the Sessions Court to add any other person to the array of the accused.

19. Thus, once the Sessions Court takes cognizance of the offence pursuant to the committal order the only other stage when the Court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers under Section 319 of the Code can be invoked. We are unable to find any other power for the Sessions Court to permit addition of new person or persons to the array of the accused. Of course it is not necessary for the Court to wait until the entire evidence is

collected for exercising the said powers."

The said decisioon is rendered by the Hon'ble Supreme Court after considering the case of Kishun Singh Vs. State of Bihar 1993 AIR SCW 771, on which the lerned Sessions Judge has placed reliance while passing the order.

#. Thus, in the instant case, the order passed by the learned Sessions Judge cannot be sustained as it has been passed without reaching the stage of recording of evidence. Under these circumstances, the revision deserves to be allowed and the same is allowed accordingly. The order impugned in the revision is quashed and set aside.

#. It is hereby clarified that this Court may not be understood to have stated anything on merits of the application and it would be open for the Sessions Court to exercise powers under Section 319 of the Code at later point of time if after recording of evidence, he feels necessary to array the present revisioner as an accused. Rule is made absolute.

Date : 2-7-1999 [ A.L.Dave, J. ]

\*kailash